

MINUTES
(Subject to approval by the Committee)
Criminal Justice Reinvestment Interim Committee
Wednesday, January 15, 2014
1:30 P.M.
Capitol Building, Room WW17
Boise, Idaho

Members present were: Co-Chairs Senator Lodge and Representative Wills; Senators Russell Fulcher, Jim Rice, Jim Guthrie and Les Bock; Representatives Linden Bateman, James Holtzclaw, Luke Malek, Grant Burgoyne and Shirley Ringo (Ad Hoc). Staff members present were Brooke Brouman, Richard Burns and Carol Deis.

Others in attendance included: Holly Koole, Idaho Prosecuting Attorneys Association; Matt Wetherell, Idaho Parole Commission; Lyn Darrington, Management and Training Corp. (MTC); and Jan Sylvester.

NOTE: The sign-in sheet, testimonies and other related materials are on file at the Legislative Services Office. Minutes are posted on the Idaho Legislature's website at: www.legislature.idaho.gov.

Co-Chair Lodge called the meeting to order at 1:35 p.m. and introduced Marc Pelka, Program Director, The Council of State Governments (CSG). Mr. Pelka worked on the Idaho Justice Reinvestment project with a very knowledgeable staff. They assembled data in a final report to enable Idaho to have one of the best criminal justice systems in the United States.

Mr. Pelka introduced CSG team members Anne Bettsworth, Policy Analyst; Carl Reynolds, Senior Legal and Policy Advisor; and recognized Marshall Clement, Director, who was not in attendance, but part of the team.

Mr. Pelka explained how the project came about through Senate Concurrent Resolution 128 requesting the study in 2013 and the subsequent action that occurred over the summer months. This included launching the interim committee and assembling stakeholders as part of the working group to oversee and devise analysis of this work. The ensuing report contains a summary of the data analysis and the stakeholder input. This is the longest report issued for any state. **Mr. Pelka** gave a quick summation of the report. The full report, along with the presentation, can be found online at: http://legislature.idaho.gov/sessioninfo/2014/interim/criminaljustice011514_report.pdf

The basis for this report was to understand the recent growth in Idaho's prison population while other states have seen decreases in those populations, along with other challenges facing the criminal justice system. Idaho's adult incarceration rate is eighth highest in the nation. Based on the growth rate of ten percent from 2008 to November of last year, a sixteen percent growth rate was projected between now and 2019, if nothing changes. With that analysis, the cost is projected to reach \$290 million to accommodate that growth. CSG compiled data that identified the following three main challenges:

1. A revolving door. The state's supervision and diversion programs are not reducing recidivism.
2. Inefficient use of prison space. The majority of prison population comprises people whose supervision was revoked, people sentenced to a "Rider" and people convicted of a nonviolent crime who are eligible for parole but have not yet been released.
3. Insufficient oversight to track outcomes, measure quality, and assure reliability of recidivism-reduction strategies.

The goal is to reduce recidivism, increase public safety and lower costs in the following ways:

1. Strengthen supervision and programs to reduce recidivism.
2. Tailor sanctions for supervision violations, provide recidivism outcomes at sentencing, and structure parole to make more productive use of prison.

3. Assess, track and ensure impact of recidivism-reduction strategies.

Five-year projected outcomes (2015-2019):

- Reduce recidivism fifteen percent.
- Reinvest \$33 million in treatment, supervision and victim restitution.
- Reduce prison population one percent and avoid \$288 million in costs.

Mr. Pelka described the following challenges and resolutions as the road map for the rest of the presentation:

Challenge 1: A revolving door

Some points that were targeted showed that Idaho probationers and parolees are completing terms successfully at a lower rate than the national average (twelve percent for probationers and sixteen percent for parolees). Factors that add pressure to Idaho's probation and parole supervision system are: the number of people under supervision, the length of the terms of supervision which is higher than the national average, and the high number of parolees who complete their parole time in prison. A relatively large percentage of probationers were terminating their time in prison. The risk assessment anticipates the likelihood of completing a term. Low-risk offenders usually succeed on probation, but high risk offenders are more often revoked from supervision. The supervision base is not providing needed accountability, supervision, programming or sanctions. The Policy Options begin on page 15 in the report.

Policy Options:

- Respond to supervision violations with swiftness and certainty.
- Increase community-based treatment and programming.
- Prioritize supervision resources based on the individual's risk of recidivism.
- Train PPOs in evidence-based strategies to change offender behavior.
- Improve the management of victim restitution and other legal financial obligations.

Challenge 2: Inefficient use of Prison Space

Most people convicted of a felony in Idaho are sentenced either to probation or to a Rider, but about thirty percent ultimately fail to complete the terms of the initial sentence and are placed in prison. Two-thirds of costs are going to the institution side; only one-third is left for community services. This is not just an Idaho problem, it is a national problem.

A recent analysis shows that low and moderate-risk violators who go directly to probation do not show as much improvement with the Rider Program as do the high-risk violators. Along this line, prison stays in Idaho for property and drug sentences are almost twice the national average. The fixed time is close to the national average, but the indeterminate period that is built into the unified sentencing is the area where offenders are spending a longer time in prison. Violent offenders are much closer to the national average. Idaho's prison population has a smaller share of violent offenses and a greater share of property/drug/other offenses than the U.S.

Policy Options:

- Tailor confinement responses for probation and parole violations.
- Provide judges with Rider participant recidivism rates at sentencing.
- Use risk assessment to drive the parole decision-making process.
- Reserve prison space for people convicted of violent offenses by regulating the percentage of time people convicted of nonviolent offenses may serve above the fixed term.

Challenge 3: Insufficient Oversight

The Interim Legislative Committee guiding Justice Reinvestment will soon expire. Without a committee to oversee the execution of policy changes, the state may encounter difficulties in maintaining implementation efforts and addressing barriers in a timely fashion.

Idaho uses the LSI -R risk and needs an assessment instrument to estimate an individual's likelihood of reoffending for sentencing and supervision purposes. Infrequent validation reports are issued. The Idaho Department of Correction (IDOC) and others have expressed interest in examining these on a more regular basis. Various concerns have been identified that could be addressed by using the validation and quality assurance approach.

State agencies lack sufficient staff and data systems to measure and report on key indicators. IDOC is transitioning to a new data system that will increase the amount and type of data that can be collected and analyzed, but the limited capacity of data and technical staff is a continuing factor. IDOC routinely evaluates the programs it administers, but treatment outsourced to private providers is evaluated less frequently.

Policy Options:

- Establish an oversight committee to measure and assess policy impacts.
- Require that risk and needs assessments be routinely reviewed for quality.
- Increase the capacity of state agencies to collect and analyze data in order to reduce inefficiencies and cut costs.
- Evaluate the quality of programs and use results to improve outcomes.

The Justice Reinvestment Analyses & Policy Framework would stabilize the prison population and, as a package, the policies described in the report have the potential to generate significant savings and reductions in recidivism for Idaho. By slowing growth in the state prison population between 2015 and 2019, effective implementation of the policy framework will help the state avoid at least \$213 million in construction costs and \$75 million in operating costs that would otherwise be needed to accommodate the forecasted growth. The five-year window is very important since projects of prison populations cannot be determined beyond five years. That is the conclusion of the part of the presentation regarding the challenges and the policy framework. It is worth emphasizing that this is an analysis with policy options for an Idaho solution.

The eighteen states vary widely in size and political orientation in terms of needs and other criteria. All of those states did a similar analysis to assist them in policy development. Crime rate trends are key indicators. Those states have used a justice reinvestment approach and all but one show reductions in crime rates to varying degrees. **Mr. Pelka** outlined some specific facts about several of the states and said he hoped that this presentation had been a guide for the full report.

Co-chair Lodge thanked Mr. Pelka for the presentation and asked the committee for questions.

Representative Malek commented that, as a former prosecutor who worked with public defenders and judges, all constituencies are frustrated with the recidivism problem and stated he is very encouraged and excited about the report and all the work done. In reference to 2(D) on page 4 (reserve prison space for individuals convicted of violent offenses . . .), when determining whether someone is a violent offender who is under the jurisdiction of the courts or IDOC, how is that

determined? Is it the offense (that the offender is there for) or is it their criminal history that would have been taken into account when sentenced. **Mr. Pelka** responded that it is the instant offense that put the person into prison that was described in the analyses and policy. **Representative Malek** said his one concern is that someone could have a violent history (taken into account when sentenced) and that could have an effect on the way that person is being sentenced here. **Representative Malek** then referred to 1(B) (increase community-based treatment and programming) and said he was most excited about watching how things work in the community. This would be an opportunity for someone entering the system to be provided with resources, and he asked for a glimpse on how to incentivize that. **Mr. Pelka** said that with violent offenders, one option suggested was excluding people from policy who had a prior violent offense of conviction that resulted in a prison sentence. That could be a clean way in policy for exempting people with a violent history coming to prison for a prior violent offense which can contribute to decision making at sentencing.

Mr. Pelka said that his team was also excited about 1(B) and he referred to page 16 in the report, 1(B), 3rd bullet, which mentioned a "gap analysis." When looking at Idaho's current probation and parole supervision system, specific needs are high among that population. The results of assessments show that high-risk offenders, coming back into prison at a high rate, score at a high level of need. Looking at that population, they saw needs involving criminal thinking and attitude requiring a program called cognitive behavioral therapy. **Mr. Pelka** stated that this was a core contributor to offender behavior and successful cognitive behavioral therapy could lead to steady residence, schooling and employment. He stated that substance use was also an important contributor to behavior, relapse and violation behavior, as well as mental health and co-occurring needs of the population. He recommended broadening how program treatment is funded and to base it on what needs are from an empirical basis. This could seem overwhelming if you look at needs of this population. However, if you look at research on what the highest association with lower rates of recidivism is, looking at the biggest needs, you can target accordingly to address that. It comes down to prioritizing resources and the population that needs to be addressed. **Representative Malek** commented that this plan would be a work in progress, since grant programs might need to be developed to get needed resources down to the community level where they would be useful. **Mr. Pelka** agreed, adding that is the goal. Funding was built into the reinvestment recommendation each year for treatment supervision. He hoped that the gap analysis would be an ongoing effort to come back to with a report about the assessed needs of that population. You can conform accordingly to address problems early before behavior escalates. This could have a big impact on crime reduction.

Senator Guthrie asked about charts that showed Idaho is retaining prisoners almost twice as long as other states. He understood the way we want to change the way we do things, but he asked if there is a point in time where someone stays in prison too long when optimism for life after prison starts to break down and a person gives up. Excluding the treatment piece, when a prisoner becomes resigned to being a product of the system, is keeping a prisoner too long an issue. **Mr. Pelka** said he wished he had that answer which would help everyone to figure out when that point is when offender behavior gives a declining return on investment for that response. There has been research into impact of length of time served and reductions in recidivism and competing factors were found. Some research shows that prison time can break a prisoner down so as to not fight it any longer; the prisoner "ages out" of reoffending. Competing research shows that time in prison increases the likelihood of reoffending. He thought it was important for states to recognize that sentencing systems are built to respond to crime and a number of factors contribute to that decision about time served. What follows in the community is what impacts a great deal someone's rehabilitation. If there is no continuity into the community, hope drops off when risks, challenges and difficulties face a person. The report tries to build up what follows prison so reentry can be positive.

Representative Wills stated that while there is not a preponderance of evidence showing that is the case, there is no doubt in minds that there comes a point that people do fall off the radar. A five-year program would address many issues and expose even more after implementation. From

the time of sentencing, an offender needs to be on an action plan which is reviewed periodically and there must be rewards for doing well all through the system, just as there is punishment. This is so critical, and he believes it plays into the entire picture, so this issue will be addressed, even if not reflected in a report somewhere.

Representative Bateman commented about prison stays in Idaho for property sentences that are about twice the national average and he wondered about the felony theft threshold. We have had tremendous inflation recently, and he asked about raising the threshold for felony theft, which is over \$1,000. Should the threshold be higher for a felony, for property theft, and could that be considered. Representative Wills agreed that this needed to be discussed.

Representative Burgoyne referenced slide 22 which showed that to avoid spending \$250 million, \$33 million in new money would have to be spent. The only way to begin to actually save money is to reduce the number of people in the criminal justice system. He stated that it was worth noting that a mental health system is needed in the state, as well as how many felonies could be misdemeanors and also looking at those in terms of infractions. We also need to look seriously at what our gateways are into the felony correctional criminal justice system. He thinks the misdemeanor population needs to be looked at seriously to identify people with a pattern of behavior inevitably leading to prison and taking action at that early level. Even with all this reform, intervention at that early stage could save the state time and money.

Co-chair Lodge stated that she has participated in discussions about misdemeanors to see if changes can be made. **Co-chair Wills** added that he had discussed this issue with members of the Supreme Court as to how to get fewer numbers going into the criminal justice system. He said not to lose faith since the door is being opened this year. Many ideas will be part of this process as we move forward. He is very excited about starting at the end result rather than waiting for years and losing people going through the system. All these issues are significant and need to be vetted and considered for a win/win result.

Senator Bock commented that there was a need for a thorough analysis of all the possible offenses, not just in the criminal code, since there are untold numbers of ordinances in counties and cities that play a role in this and help identify certain people as offenders, moving them into the criminal justice system. It is very difficult to rethink this if all offenses haven't been considered to understand the need for proportionality and perhaps eliminating some crimes and making them infractions. When a judge is faced with someone who is mentally ill and a crime has been committed, the judge has to do something with that person. If there is no place for that person, then it would mean jail time since public safety is the number one concern, as well as meting out appropriate punishment, including avenues for rehabilitation to get that person back into mainstream society. Improving the mental health system is one part, but we also need to give judges options that will work.

Senator Rice echoed those sentiments expressed by Senator Bock and stated that there was a need for action on this issue. Actions being taken today do not achieve an appropriate result and we need to put this on the "to do" list. The mental health issue with regard to criminal offenses is an area that must be addressed and something has to be done.

Senator Fulcher thanked Mr. Pelka for his work and asked for a recap on 1(D) on page 4 of the report (train PPOs in evidence-based strategies to change offender behavior). It looked to him that should the recommendations or strategies be adopted, the focus would shift significantly to the skill of PPOs and how they interact. He asked about best practices for training PPOs; what is the very best way to do that, since the result is going to depend upon those PPOs. Mr. Pelka responded that Effective Practices in Correctional Supervision (EPICS) was a training program that arms PPOs with motivational interviewing techniques so they can do role modeling and role playing with offenders. People respond best when their core behavior, feelings and thoughts are explored behind what prompts involvement in the criminal justice system and challenges compliance with conditions of supervision. Training allows PPOs to role play situations that could lead to offender recidivism and

how to successfully negotiate situations. He recommended a model Train-the-Trainer Program which would allow all PPOs in the state to be trained.

Senator Guthrie inquired about restitution from offenders. He wondered if statutory liens could be attached to property when someone might later have assets to repay restitution. **Mr. Pelka** referred to page 13 in the report where it stated that the average amount owed was \$727 for restitution. In 2012, Idaho courts ordered \$12 million in restitution. He thought the idea about liens was an excellent idea worth pursuing. No policy was addressed around restitution, and he said he would love to get ideas. He pointed out 1(E) on page 18 of the report to create a subcommittee under the Idaho Criminal Justice Commission to study the topic of restitution and legal financial obligations. Policy would help the overall management of the debt.

Senator Bock stated that if the objective is to get offenders successfully back into society, there is a tough balancing act to make sure that person is held financially accountable but to also not make it impossible to succeed. He wasn't sure where the line was and it also suggests to him that there is a need for flexibility in the system so that at least in terms of subjective requirements of an offender, that we not do something inadvertently that causes that person to be unable to comply.

Co-chair Lodge stated that they were looking to add some workforce development so that when offenders leave they will have a job to help pay some restitution.

Co-chair Lodge asked the committee if they wanted to accept this report so that draft legislation could begin for the committee's approval within the next several weeks. She announced that this report would be released to the full Legislature. She said that a motion was in order.

Senator Bock moved to accept the report and move forward from there, seconded by Representative Burgoyne and Co-chair Lodge said that a roll call vote had been requested. The motion passed unanimously with 7 ayes and 0 nays; Senators Fulcher, Rice, and Bateman had excused themselves from the meeting prior to this vote.

Co-chair Lodge thanked everyone who had been involved in this project throughout the summer who gave input for this report.

Co-chair Lodge adjourned the meeting at 3:03 p.m.

NOTE: The Minutes from the December 12, 2013 meeting were sent to members after this meeting for approval with a buck slip. The Minutes were approved unanimously and no member objected to the approval via buck slip.